

COTTONWOOD HEIGHTS

RESOLUTION No. 2012-06

A RESOLUTION APPROVING AN AMENDED INTERLOCAL AGREEMENT WITH THE COTTONWOOD HEIGHTS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY FOR THE CANYON CENTRE COMMUNITY DEVELOPMENT PROJECT AREA

WHEREAS, the Community Development and Renewal Agency (the "*Agency*") of the city of Cottonwood Heights (the "*City*") was created to transact the business and exercise all of the powers provided for in the Limited Purpose Local Government Entities - Community Development and Renewal Agencies act (Title 17C, Chapters 1 through 4, UTAH CODE ANNOTATED (1953 as amended) and any subsequent, replacement or amended law or act (the "*CDRA Act*"); and

WHEREAS, pursuant to section 17C-4-103 of the CDRA Act, the Agency heretofore has adopted a project area plan (the "*Project Area Plan*") for the Canyons Centre project area (the "*Project Area*") by its Resolution No. 2011-01; and

WHEREAS, pursuant to its Ordinance No. 170, the city council (the "*Council*") of the City has adopted the Project Area Plan as the official community development plan for the Project Area (the "*Official Plan*"), and has authorized the Agency to proceed to carry out the Official Plan as soon as it becomes effective, all as provided in section 17C-4-105 of the CDRA Act; and

WHEREAS, pursuant to section 17C-4-201 of the CDRA Act, the Agency may negotiate with the City for its consent to the Agency receiving the City's tax increment for the purpose of providing funds to carry out the Official Plan; and

WHEREAS, such consent by the City may be expressed in an interlocal agreement between the Agency and the City under the Interlocal Cooperation Act, UTAH CODE ANN. §11-13-101 *et. seq.* (the "*Interlocal Cooperation Act*"), which provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, the Agency and the City are public agencies for purposes of the Interlocal Cooperation Act and entered into an interlocal agreement for the Project Area effective 10 May 2011 which they now desire to amend; and

WHEREAS, the Council met on 10 May 2011 to consider, among other things, approving the City's entry into an amended interlocal agreement for the Project Area (the "*Agreement*") to supersede the prior version of such agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the city council of the city of Cottonwood Heights that the attached Agreement with the Agency be, and hereby is, approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City; and

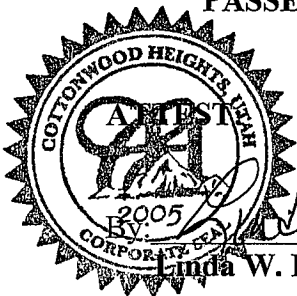
BE IT FURTHER RESOLVED by the city council of the city of Cottonwood Heights that the Agreement is so approved with such additions, modification, deletions or other changes as within one year hereafter may be deemed necessary or advisable by the City's mayor in consultation with the City's manager and attorney; and

BE IT FURTHER RESOLVED by the city council of the city of Cottonwood Heights that the City shall cooperate with the Agency to (a) provide notice of adoption of the Agreement as provided in section 17C-4-202(2) of the CDRA Act; (b) file a copy of the Agreement with the State Tax Commission, the State Board of Education, the state auditor and the Salt Lake County Auditor, as provided in section 17C-4-203 of the CDRA Act; and (c) provide such other notice(s), make such other filing(s) and perform such other acts as may be required by any applicable law in connection with approval and adoption of the Agreement.

This Resolution, assigned no. 2012-06, and the Agreement shall take effect following provision of notice of the Agreement by the Agency and/or the City, as provided in 17C-4-202(3) of the CDRA Act.

PASSED AND APPROVED effective 14 February 2012.

COTTONWOOD HEIGHTS



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

By *Kelvyn H. Cullimore, Jr.*
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 14th day of February 2012.

RECORDED this 14 day of February 2012.

Amended Interlocal Cooperation Agreement
for the Canyon Centre CDA
(Cottonwood Heights—Cottonwood Heights CDRA)

THIS AMENDED INTERLOCAL COOPERATION AGREEMENT (this “*Agreement*”), as previously stated, is entered into effective 14 February 2012, between the city of **COTTONWOOD HEIGHTS**, a Utah municipality (the “*City*”) and the **COTTONWOOD HEIGHTS COMMUNITY DEVELOPMENT AND RENEWAL AGENCY** (the “*Agency*”). The City and the Agency are sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.” This Agreement amends and restates a prior agreement covering the same subject matter entered into between the City and the Agency on or about 10 May 2011.

RECITALS:

A. The Agency was created and organized for the purposes provided in “Limited Purpose Local Government Entities--Community Development and Renewal Agencies” codified at Title 17C, chapters 1 through 4, UTAH CODE ANN., 1953, as amended, and any successor law or act (the “*Development Act*”), and is authorized and empowered to undertake various activities and actions pursuant to the Development Act.

B. The Agency has commenced the process under the Development Act to create the Canyons Centre Community Project Area (the “*Project Area*”) and has prepared (1) the amended community development project area plan for the Project Area, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference (the “*Project Area Plan*,” which includes the legal description and a map of the Project Area), and (2) a draft of the “*Project Area Budget*” (the “*Draft Budget*”), a copy of which is attached hereto as Exhibit “B” and incorporated by this reference.

C. Pursuant to the Project Area Plan and the Draft Budget, the Agency desires to encourage, promote and provide for the development of a mixed-use project (the “*Project*”) that will consist of hotel, office and retail uses within the Project Area.

D. The Development Act authorizes funding of community development project areas and plans pursuant to interlocal agreements with taxing entities.

E. The Agency is willing to use certain property tax increment from the Project Area attributable to the City’s tax levy, and the City is willing to consent to use of such property tax increment to fund the Project Area and Plan.

F. Section 17C-4-201 of the Development Act authorizes a taxing entity to “consent to the agency receiving the [taxing] entity’s... tax increment... for the purpose of providing funds to carry out a proposed or adopted community development project area plan.”

G. Section 11-13-215 of the Interlocal Cooperation Act, UTAH CODE ANN. §§11-13-101 *et seq.* (the “*Cooperation Act*”), also authorizes a taxing entity to share its tax and other revenues with other governmental agencies.

H. For the purpose of providing funds to carry out the adopted Plan, the City desires to consent to the Agency receiving certain tax increment from the Project Area attributable to the City's tax levy as provided in this Agreement.

I. This Agreement is entered into by the Parties pursuant to the authority of applicable law, including the Development Act and the Cooperation Act.

A G R E E M E N T:

NOW, THEREFORE, for the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party hereto, the Parties hereby agree as follows:

1. **Base Year and Base Taxable Value; Payment of Tax Increment to Agency by Salt Lake County.** The Parties agree that for purposes of calculation of the City's share of tax increment from the Project Area to be paid to the Agency pursuant to this Agreement, the base year shall be 2010, and the base taxable value shall be the 2010 assessed taxable value of all real and personal property within the Project Area. Based upon review of the Salt Lake County records, the Parties agree that the 2010 base taxable value of the Project Area is four million seven hundred and forty-eight thousand and one hundred dollars (\$4,748,100). The increase in the property tax revenues attributable to the City's tax levy on both real and personal property within the Project Area, over and above the property tax revenues attributable to City's tax levy on the base taxable value (i.e.--the tax increment attributable to the City's tax levy) (the "*Tax Increment*"), in accordance with §17C-4-203(2) of the Development Act, shall be paid by Salt Lake County to the Agency for the period of time specified in Section 2 below.

2. **City's Consent; Limitations.** Pursuant to §17C-4-201 of the Development Act and §11-13-215 of the Cooperation Act, the City hereby agrees and consents that the Agency, for twenty-five (25) tax years, beginning with the year the Agency begins to draw the tax increment, shall receive 75% of the Tax Increment attributable to the City's tax levy on both real and personal property within the Project Area pursuant to the Agency's final Project Area Plan and final Budget, drafts of which are attached hereto as Exhibit "A" and Exhibit "B," respectively, for the purpose of providing funds to the Agency to carry out the Plan; provided, however, that:

(a) The Agency may not be paid any portion of the City's taxes resulting from an increase in the City's tax rate that occurs after the City approves this Agreement, unless the City specifically so consents in writing pursuant to an amendment to this Agreement or a separate agreement;

(b) Tax increment attributable to the City's tax levy for tax years beyond the twenty-five (25) year collection period (the "*Collection Period*") under this Agreement shall be paid by Salt Lake County to the City;

(c) In no event shall the Tax Increment distribution be implemented and initiated any later than 1 March 2015;

(d) The City's contribution will be in the form of property tax increment only, and no sales tax increment will be contributed by the City in connection with the Project; and

(e) The Agency shall prepare and provide an annual progress report for each fiscal year during the Collection Period within thirty (30) days after the end of the Agency's immediately prior fiscal year.

3. **Final Project Area Plan and Budget.** The Agency agrees to finalize and adopt its Project Area Plan and Budget in a form agreeable to the City and consistent with the terms and conditions of this Agreement and applicable law.

(a) **Failure to Approve Final Budget.** If the Agency does not approve a final Budget pursuant to chapter 4 of the Development Act, then this Agreement shall terminate and no Party shall have any further obligations hereunder.

(b) **Approval of Draft Budget.** If, pursuant to chapter 4 of the Development Act, the Agency approves the draft Budget in the form of Exhibit "B" attached hereto, then that Budget shall be the final approved Budget.

(c) **Revisions to Draft Budget.** If the Agency makes any changes to the draft Budget (in the form of Exhibit "B") in connection with its approval pursuant to chapter 4 of the Development Act, then the Agency shall provide the City with a copy of such revised Budget. If the City approves such revised Budget, then the Parties shall amend this Agreement to jointly adopt and approve the revised Budget, and that revised shall be the final approved Budget hereunder. If the Parties do not execute such an amendment to this Agreement within ninety (90) days after the date that the Agency provides such revised Budget to the City, this Agreement shall terminate and no Party shall have any further obligation hereunder.

4. **No Third Party Beneficiary.** Nothing in this Agreement shall be deemed or considered to create any obligation in favor of, or rights in, any person or entity not a party to this Agreement. No person or entity is an intended third party beneficiary of this Agreement. Any obligation of the Agency to make any payments to a developer, business or any person or entity shall be set forth in written agreements between the Agency and that person or entity, in accordance with terms and requirements satisfactory to the Agency.

5. **Due Diligence.** Each of the Parties acknowledges for itself that it has performed its own review, investigation and due diligence regarding the relevant facts concerning the Project Area and Plan and the expected benefits to the community and to the Parties, and each of the Parties relies on its own understanding of the relevant facts and information, after having completed its own due diligence and investigation.

6. **Interlocal Cooperation Act.** In satisfaction of the requirements of the Cooperation Act in connection with this Agreement, the Parties agree as follows:

(a) **Authorization.** This Agreement shall be authorized by a resolution of the legislative or governing body of each Party pursuant to and in accordance with the provisions of §11-13-202.5 of the Cooperation Act.

(b) **Approval by Counsel.** This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and

in accordance with the §11-13-202.5 of the Cooperation Act.

(c) Filing. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party pursuant to §11-13-209 of the Cooperation Act.

(d) Administrator. Pursuant to §11-13-207 of the Cooperation Act, the Chair of the Agency is designated as the administrator for all purposes of the Cooperation Act.

(e) Term. The term of this Agreement shall commence on the date of full execution and delivery of this Agreement by the Parties and continue through the date that is 180 days after the last payment of Tax Increment by Salt Lake County to the Agency pursuant to this Agreement; provided, however, that in no event shall the Agency be able to receive the Tax Increment for longer than the Collection Period specified above.

(f) No Separate Entity. This Agreement does not create a separate interlocal entity.

7. Publication of Notice. Immediately after full execution and delivery of this Agreement, each of the Parties shall cause to be published a notice regarding this Agreement as allowed or provided in §11-13-219 of the Cooperation Act and §17C-4-202 of the Development Act. For purposes of §17C-4-202 of the Development Act, the Agency shall cause a notice to be published that sets forth a summary of this Agreement and includes a statement that the adopting resolution or this Agreement is available for general inspection and the place and hours of inspection.

8. Modification. A modification of, or amendment to, any provision contained in this Agreement shall be effective only if the modification or amendment is in writing and signed by the Parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

9. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the state of Utah.

10. Further Actions. The Parties agree to execute such additional documents and take further actions as may become necessary or desirable to fully carry out each of the provisions and the intent of this Agreement, including (a) the development and redevelopment of the Project Area; and (b) adjustment of any provision of this Agreement to the extent necessary to bring it into compliance with all applicable governmental requirements without diminishing the rights and authority granted to Agency under this Agreement.

11. Severability. Whenever possible, each provision of this Agreement and every related document shall be interpreted in such a manner as to be consistent and valid under applicable law. If any provision of any provision of this Agreement or any related document is deemed invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remainder of such provisions or the remaining provisions of this Agreement or said document.

12. Entire Agreement. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties concerning the Project and supersedes and

cancels all prior agreements between the Parties with respect to the subject matter hereof.

DATED effective the date first above written.

AGENCY:

**COTTONWOOD HEIGHTS COMMUNITY
DEVELOPMENT AND RENEWAL AGENCY**

ATTEST:

By: _____
Kelvyn H. Cullimore, Jr., Chairman

By: _____
Linda W. Dunlavy, Secretary

By: _____
Liane Stillman, Executive Director

STATE OF UTAH)
):ss
COUNTY OF SALT LAKE)

On __ February 2012, personally appeared before me **Kelvyn H. Cullimore, Jr., Liane Stillman** and **Linda W. Dunlavy**, who being by me duly sworn did say, that they are the chairman, executive director and secretary, respectively, of the **Cottonwood Heights Community Development and Renewal Agency**, and that said instrument was signed in behalf of said agency by authority of law.

NOTARY PUBLIC

APPROVED AS TO FORM:

Wm. Shane Topham, Agency Counsel

CITY:

COTTONWOOD HEIGHTS

ATTEST:

By: _____
Kelvyn H. Cullimore, Jr., Mayor

By: _____
Linda W. Dunlavy, Recorder

STATE OF UTAH)
):ss
COUNTY OF SALT LAKE)

On __ February 2012, personally appeared before me **Kelvyn H. Cullimore, Jr.** and **Linda W. Dunlavy**, who being by me duly sworn did say, that they are the mayor and the recorder, respectively, of the city of **Cottonwood Heights**, and that said instrument was signed in behalf of said city by authority of law.

NOTARY PUBLIC

APPROVED AS TO FORM:

Wm. Shane Topham, City Attorney

Exhibit “A” to
Interlocal Cooperation Agreement

(Attach Copy of Project Area Plan)

Exhibit “B” to
Interlocal Cooperation Agreement

(Attach Copy of Draft Project Area Budget)